

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:16 CR 133
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
RICHARD G. LEMOINE, JR.,)	
)	
Defendants.)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>

This case again comes before this Court on remand from the United States Court of Appeals for the Sixth Circuit. Mr. Lemoine pled guilty to one count of receipt and distribution of child pornography and one count of possession of child pornography. (ECF #13). He was sentenced to 151 months on each count, with the time to run concurrent. (ECF #18).


Approximately one year later, Mr. Lemoine filed a Motion to Vacate Sentence under 28 U.S.C. §2255 claiming, in relevant part, that his trial counsel was constitutionally ineffective for failing to raise the Double Jeopardy Clause at sentencing challenging the indictment as duplicitous, and for advising to him to plead guilty to both charges. (ECF #34). This Court denied his motion and Mr. Lemoine appealed that denial. (ECF #41, 42). On appeal, the Sixth Circuit remanded the case for “further proceedings on Lemoine’s double jeopardy-focused ineffective assistance of

counsel claims, (ECF #48). On remand, the Court found that Mr. Lemoine's convictions did not violate the Double Jeopardy Clause of the United States Constitution. Subsequent to this finding, the Government sought to dismiss the possession charge, and the Court re-sentenced Mr. Lemoine on the sole remaining count of distribution. He again received a sentence of 151 months, to be followed by ten years of supervised release, but his special assessment was reduced by \$100 due to the dismissal of the possession charge.

Mr. Lemoine appealed the revised judgment. (ECF #71). The Court of Appeals characterized it prior remand as a "limited remand," and held that this Court exceeded the scope of the remand when it re-sentenced Mr. Lemoine after finding no double jeopardy violation. Therefore, as directed in the Court of Appeals most recent mandate, and without objection from the parties, the Amended Judgment issued on September 22, 2021 is hereby VACATED. (ECF #69). The original Judgment issued on November 23, 2016 is hereby REINSTATED. (ECF #18). Further, the Court will issue a separate order addressing the final resolution of Mr. Lemoine's motion under 28 U.S.C. §2255.

IT IS SO ORDERED.

Date: October 28, 2022


Donald C. Nugent
United States District Judge